Kaochern Corp Sdn Bhd v Pentadbir Tanah Wilayah Persekutuan and another application

HIGH COURT (KUALA LUMPUR) — LAND REFERENCE NOS WA-15–13–04 OF 2022 AND WA-15–14–04 OF 2022
GAN TECHIONG JC
12 JUNE 2024

Land Law — Acquisition of land — Compensation — Applicant objected amount of compensation and claimed for injurious affection — Whether approval for reduction of setback was granted — Whether compensation for injurious affection ought to be awarded — Land Acquisition Act 1960 s 8 — Highway Authority Malaysia (Set Backs of Highway) Regulations 2007 reg 2(3)

The applicant was the registered proprietor of two plots of adjacent land ie Lots 54992 and 54993, and both lots were partially acquired by the respondent for the purpose of 'Lebuhraya Setiawangsa — Pantai Expressway (SPE) Tambahan'. The acquiring party was Lebuhraya DUKE Fasa 3 Sdn Bhd, the concessionaire for the said highway. The respondent had issued declarations twice under s 8 of the Land Acquisition Act 1960 ('the LAA') to partially acquire the two lots of land. The first declaration was published in the Government Gazette on 27 April 2017. As the land acquisition was not completed within two years, this declaration lapsed by operation of s 8(4) of the LAA on 27 April 2019. The second declaration published on 30 December 2020 was applicable. As the partial acquisition was to be for the purpose of Lebuhraya Setiawangsa — Pantai Expressway (SPE) Tambahan, it was possible for the Highway Authority of Malaysia ('LLM') to support applications to reduce the setback distance, subject to approval by the Minister for Public Works ('the Minister'). The concessionaire did apply in 2017 and obtained approval from the Minister, with LLM's endorsement, to reduce the setback distance for Lot 54992 to 1.84 metres and for Lot 54993, the setback distance was approved to be reduced to only 1.5 metres. The applicant highlighted that the approval then was intended for land not subjected to any land acquisition. The applicant filed two applications under s 37 of the LAA to require the land administrator to refer its objections to the High Court regarding the amount of compensation awarded by the respondent. Whilst the applicant had agreed to accept the valuation of RM10,000 per sqmt decided by the respondent in his award, it put up a robust claim for compensation for injurious affection caused to its remaining land. The heads of claims put up by the applicant were for injurious affection caused by the setback that would be required from the new boundary of the remaining land, injurious affection due to 'reduction of gross development value and increase in building costs', injurious affection due to 'loss of visibility from the Federal Highway' and early possession of land

because the acquiring party had entered the acquired part of the land early, before the acquisition was completed. The applicant submitted, inter alia, that the approval granted by the Minister in year 2017 was not for the purpose of land to be acquired, that the s 8 declaration published in the Government *Gazette* on 27 April 2017 had lapsed by operation of law on 27 April 2019, and there was no approval for setback reduction granted prior to the current acquisition which was based on a second declaration published on 30 December 2020. The applicant's stand was that there was no valid approval by the Minister to reduce the setback distance to only 1.7 metres for Lot 54992 and 1.5 metres for Lot 54993 and, therefore, compensation for the area required to comply with the setback requirement ought to be awarded. A claim of late payment charges at 5%pa on the compensation was also sought, to be computed from 3 February 2017 until date of payment.

Held:

(1) On the issue of approval for reduction of setback, the court was bound to regard it as a situation of no final approval being granted by the Minister even though there was a very high likelihood of such approval being granted in the future. It was erroneous to regard the LLM as having the power to approve the reduction of setback. As could be seen from reg 2(3) of the Highway Authority Malaysia (Set Backs of Highway) Regulations 2007, the power to provide a distance of setback less than 13 metres was 'within the approval of the Minister, on grounds of public interest'. There was no such approval granted by the Minister as at the date of hearing of these proceedings. Even though LLM had recommended and endorsed the reduction of the new setback distance for Lots 54992 and 54993, it was not open to the court to regard a recommendation or endorsement by LLM as an approval for the ultimate power to approve was vested in the office of the Minister himself. Even though there was no approval by the Minister applicable to both lots for the post-acquisition situation, the unequivocal endorsement issued by LLM had resulted in a high probability of the applicant receiving approval from the Minister in the future, to reduce the setback distance to 1.5 metres and 1.7 metres for Lots 54993 and 54992 respectively (see paras 23–25 & 27–28).

(2) Since the applicant had agreed to accept the valuation of RM10,000 per sqmt used by the respondent, this rate was maintained. On the issue of early entry into the land, the rental method used by the respondent was reasonable. It was by applying a rate of RM11 per sqmt per month for a period of 57 months, and awarding RM305,374.65 for Lot 54992 and RM120,492.30 for Lot 54993 (see paras 30–31).

(3) Compensation for injurious affection ought to be separated into three parts instead of awarding a single lump sum. The first part of injurious affection which was caused to the 'setback area' was a reduction in its

market value by approximately 30%. Thus, for Lot 54992, a sum of RM918,045.90 was awarded while for Lot 54993, a sum of RM464,680.50 was awarded (see paras 32 & 35).

(4) As for the second part of injurious affection, which was impairment due to 'loss of visibility from the Federal Highway', the loss was minimal for the remaining land because there was no serious obstruction of view. Further, any building erected there in the future would be multi-storey and quite clearly visible from all angles. Therefore, the injurious affection caused by the 'loss of visibility' should, at most, be 5% of the value of the remaining area less the setback area. By using 5% as the diminution in value, it was awarded as follows: for Lot 54992, a sum of RM728,971.85 for the remaining area of 1,457.9437sqmt, ie after deducting 306.0153sqmt from the remaining area of 1,763.959sqmt, while for Lot 54993, a sum of RM304,967.75 was awarded for the area of 609.9355sqmt ie after deducting 154.8935sqmt from the remaining area of 764.829sqmt in Lot 54993 (see paras 36–37).

(5) For the third part of injurious affection ie the impairment on the remaining land, the injurious affection under this head of claim should, at most, be 5% of the remaining area less the setback area. For Lot 54992, a sum of RM728,971.85 for the remaining area of 1,457.9437sqmt, ie after deducting 306.0153sqmt from the remaining area of 1,763.959sqmt should be awarded. As for Lot 54993, applying the same 5%, a sum of RM304,967.75 was awarded for the area of 609.9355sqmt. By adding up the respective sums stated above, a total additional compensation of RM3,450,605.60, was ordered in the form of two awards: RM2,375,989.60 for Lot 54992 and RM1,074,616 for Lot 54993 (see paras 38–39 & 41).

(6) As for late payment charges, the applicant's prayer to order late payment charges to run from year 2017 was declined. Late payment charges at 5%pa on the total additional compensation, to be computed from the date of issuance of Form K till date of payment was awarded. This was fair because a generous award for injurious affection caused to the 'setback area' had been issued to the applicant even though LLM had already endorsed the reduction in the setback distance to 1.7 metres for Lot 54992 and 1.5 metres for Lot 54993 respectively (see para 42).

[Bahasa Malaysia summary

Pemohon adalah pemilik berdaftar bagi dua lot tanah bersebelahan iaitu Lot 54992 dan 54993, dan kedua-dua lot tersebut sebahagiannya diambil oleh responden bagi tujuan 'Lebuhraya Setiawangsa — Pantai Expressway (SPE) Tambahan'. Pihak yang mengambil adalah Lebuhraya DUKE Fasa 3 Sdn Bhd, pemegang konsesi bagi lebuh raya tersebut. Responden telah mengeluarkan pengisytiharan dua kali di bawah s 8 Akta Pengambilan Tanah 1960 ('APT')

untuk mengambil sebahagian daripada dua lot tanah tersebut. Pengisytiharan pertama telah diterbitkan dalam Warta Kerajaan pada 27 April 2017. Oleh kerana pengambilan tanah tersebut tidak diselesaikan dalam tempoh dua tahun, pengisytiharan ini luput mengikut s 8(4) APT pada 27 April 2019. Pengisytiharan kedua yang diterbitkan pada 30 Disember 2020 adalah yang terpakai. Oleh kerana pengambilan secara sebahagian tersebut adalah untuk tujuan Lebuhraya Setiawangsa — Pantai Expressway (SPE) Tambahan, adalah mungkin bagi Lembaga Lebuhraya Malaysia ('LLM') menyokong permohonan untuk mengurangkan jarak undur, tertakluk kepada kelulusan Menteri Kerja Raya ('Menteri'). Pemegang konsesi telah memohon pada 2017 dan mendapat kelulusan daripada Menteri, dengan sokongan LLM, untuk mengurangkan jarak undur bagi Lot 54992 kepada 1.84meter dan bagi Lot 54993, jarak undur diluluskan untuk dikurangkan kepada hanya 1.5meter. Pemohon menegaskan bahawa kelulusan tersebut pada masa itu adalah untuk tanah yang tidak terlibat dalam sebarang pengambilan tanah. Pemohon memfailkan dua permohonan di bawah s 37 APT menghendaki pentadbir tanah merujuk bantahan mereka kepada Mahkamah Tinggi mengenai jumlah pampasan yang diberikan oleh responden. Walaupun pemohon bersetuju menerima penilaian RM10,000 bagi setiap meter persegi yang diputuskan oleh responden dalam anugerahnya, ia mengemukakan tuntutan kukuh untuk pampasan bagi kesan mudarat yang disebabkan ke atas tanah yang tinggal. Bahagian tuntutan yang dikemukakan oleh pemohon adalah untuk kesan mudarat akibat jarak undur yang akan diperlukan dari sempadan baru tanah yang tinggal, kesan mudarat akibat 'pengurangan nilai pembangunan kasar dan peningkatan kos pembinaan', kesan mudarat akibat 'kehilangan penglihatan dari Lebuhraya Persekutuan', dan pengambilan awal tanah kerana pihak pengambil telah memasuki bahagian tanah yang diambil awal, sebelum pengambilan selesai. Pemohon berhujah, antara lain, bahawa kelulusan yang diberi oleh Menteri pada tahun 2017 bukan untuk tujuan pengambilan tanah itu sendiri, bahawa pengisytiharan s 8 yang diterbitkan dalam Warta Kerajaan pada 27 April 2017 telah tamat kuasa mengikut undang-undang pada 27 April 2019, dan tiada kelulusan pengurangan jarak undur yang diberikan sebelum pengambilan berdasarkan pengisytiharan kedua yang diterbitkan pada 30 Disember 2020. Pendirian pemohon adalah bahawa tiada kelulusan yang sah oleh Menteri untuk mengurangkan jarak undur kepada hanya 1.7meter untuk Lot 54992 dan 1.5meter untuk Lot 54993, dan oleh itu, pampasan untuk kawasan yang diperlukan bagi mematuhi keperluan jarak undur seharusnya diberikan. Tuntutan caj pembayaran lewat sebanyak 5% setahun atas pampasan juga telah dipohon, untuk dikira dari 3 Februari 2017 sehingga tarikh pembayaran.

Diputuskan:

(1) Mengenai isu kelulusan untuk pengurangan jarak undur, mahkamah terikat untuk menganggapnya sebagai situasi di mana tiada kelulusan

muktamad diberikan oleh Menteri walaupun terdapat kemungkinan tinggi kelulusan sedemikian akan diberikan di masa hadapan. Adalah salah untuk menganggap LLM sebagai mempunyai kuasa untuk meluluskan pengurangan jarak undur. Seperti yang boleh dilihat daripada peraturan 2(3) Peraturan-Peraturan Lebuhraya Malaysia (Jarak Undur Lebuhraya) 2007, kuasa untuk menetapkan jarak undur kurang daripada 13 meter adalah 'di bawah kelulusan Menteri, atas alasan kepentingan awam'. Tiada kelulusan sedemikian diberikan oleh Menteri sehingga tarikh pendengaran prosiding ini. Walaupun LLM telah mencadangkan dan menyokong pengurangan jarak undur baharu bagi Lot 54992 dan 54993, mahkamah tidak boleh menganggap cadangan atau sokongan oleh LLM sebagai kelulusan kerana kuasa utama untuk meluluskan adalah terletak pada pejabat Menteri sendiri. Walaupun tiada kelulusan oleh Menteri yang sah untuk kedua-dua lot bagi situasi selepas pengambilalihan, sokongan tegas yang dikeluarkan oleh LLM telah meningkatkan kebarangkalian pemohon menerima kelulusan daripada Menteri di masa hadapan, untuk mengurangkan jarak undur kepada 1.5meter dan 1.7meter masing-masing bagi Lot 54993 dan 54992 (lihat perenggan 23–25 & 27–28).

(2) Oleh kerana pemohon telah bersetuju menerima penilaian RM10,000 bagi setiap meter persegi yang digunakan oleh responden, kadar ini dikekalkan. Mengenai isu kemasukan awal ke hartanah, kaedah sewaan yang digunakan oleh responden adalah munasabah. Ia adalah dengan menggunakan kadar RM11 setiap meter persegi sebulan untuk tempoh 57 bulan, dan pemberian jumlah sebanyak RM305,374.65 untuk Lot 54992 dan RM120,492.30 untuk Lot 54993 (lihat perenggan 30–31).

(3) Pampasan bagi kesan mudarat harus diasingkan kepada tiga bahagian dan bukan diberi sebagai jumlah tunggal sahaja. Bahagian pertama kesan mudarat yang disebabkan oleh 'kawasan jarak undur' adalah pengurangan nilai pasaran sebanyak kira-kira 30%. Oleh itu, untuk Lot 54992, jumlah RM918,045.90 telah dianugerahkan manakala untuk Lot 54993, jumlah RM464,680.50 telah dianugerahkan (lihat perenggan 32 & 35).

(4) Bagi bahagian kedua kesan mudarat iaitu kerosakan akibat 'kehilangan penglihatan dari Lebuhraya Persekutuan', kerugian adalah minimum untuk tanah yang tinggal kerana tiada halangan serius terhadap pemandangan. Tambahan pula, sebarang binaan yang didirikan di masa hadapan akan berbilang tingkat dan jelas kelihatan dari semua sudut. Oleh itu, kesan mudarat yang disebabkan oleh 'kehilangan penglihatan' seharusnya, pada kadar maksimum, 5% daripada nilai kawasan yang tinggal selepas ditolak kawasan jarak undur. Mengambil 5% sebagai pengurangan nilai, jumlah yang diputuskan adalah seperti berikut: untuk Lot 54992, RM728,971.85 untuk kawasan baki 1,457.9437

meter persegi, selepas menolak 306.0153 meter persegi daripada kawasan baki 1,763.959 meter persegi, manakala untuk Lot 54993, RM304,967.75 untuk kawasan sebanyak 609.9355 meter persegi selepas menolak 154.8935 meter persegi daripada kawasan baki 764.829 meter persegi dalam Lot 54993 (lihat perenggan 36–37).

(5) Untuk bahagian ketiga kesan mudarat iaitu kerosakan pada tanah yang tinggal, kesan mudarat di bawah bahagian tuntutan ini seharusnya, pada kadar maksimum, 5% daripada kawasan yang tinggal selepas ditolak kawasan jarak undur. Bagi Lot 54992, jumlah RM728,971.85 bagi baki keluasan 1,457.9437 meter persegi, iaitu selepas ditolak 306.0153 meter persegi daripada baki keluasan 1,763.959 meter persegi hendaklah diberikan. Manakala untuk Lot 54993, dengan menggunakan kadar 5% yang sama, jumlah RM304,967.75 diberikan untuk kawasan seluas 609.9355 meter persegi. Dengan menjumlahkan jumlah yang diputuskan tersebut, jumlah pampasan tambahan keseluruhan adalah RM3,450,605.60, yang diperintah dalam dua anugerah: RM2,375,989.60 untuk Lot 54992 dan RM1,074,616 untuk Lot 54993 (lihat perenggan 38–39 & 41).

(6) Bagi caj lewat bayaran, permohonan pemohon agar caj lewat bayaran dikenakan mulai tahun 2017 ditolak. Caj lewat bayaran sebanyak 5% setahun daripada jumlah pampasan tambahan keseluruhan, yang dikira mulai dari tarikh pengeluaran Borang K sehingga tarikh pembayaran, diberikan. Ini adalah adil kerana pampasan yang mewah bagi kesan mudarat yang disebabkan ke atas 'kawasan jarak undur' telah diberikan kepada pemohon walaupun LLM telah mengesahkan pengurangan jarak undur masing-masing kepada 1.7meter untuk Lot 54992 dan 1.5meter untuk Lot 54993 (lihat perenggan 42).]

Cases referred to

Amitabha Guha (as beneficiary for the estate of Madhabendra Mohan Guha) v Pentadbir Tanah Daerah Hulu Langat [2021] 4 MLJ 1, FC (refd)

Semenyih Jaya Sdn Bhd v Pentadbir Tanah Daerah Hulu Langat and another case [2017] 3 MLJ 561, FC (refd)

Legislation referred to

Federal Constitution art 13

Highway Authority Malaysia (Set Backs of Highway) Regulations 2007 reg 2(1), (3)

Land Acquisition Act 1960 ss 8, 8(4), 37, 48 Forms N, K

David Ng Yew Kiat (with Leah Marie Samuel) (Steven Thiru & Sudhar Partnership) for the appellant.

Iskandar Zulkarnaen (Federal Counsel, Attorney General's Chambers) for the respondent.

Adi Harman bin Mawardi (with Mohamad Amir Ardzhar) watching brief for DUKE Phase 3 Sdn Bhd.
Mohd Zamri bin Awang for the government assessor.
Ery Zuwardi bin Anuar for the private assessor.

Gan Techiong JC:

INTRODUCTION

[1] Proprietors of lands wholly acquired under the Land Acquisition Act 1960 ('the LAA 1960') are usually concerned only about the value of the land and building (if any), for compensation purpose. However, proprietors of lands that are *partially acquired* have more to worry about. Just like the applicant in this case, they would be concerned about the effect of 'injurious affection' and/or 'severance' (if any) caused to the remaining part/s of their land. Fortunately, the LAA 1960 does contain provisions for compensation to be awarded for losses caused by such 'injurious affection' and/or 'severance'.

[2] In this case, the applicant is the registered proprietor of two plots of adjacent land, and both lots were partially acquired by the respondent for the purpose of 'Lebuhraya Setiawangsa — Pantai Expressway (SPE) Tambahan'. The acquiring party was Lebuhraya DUKE Fasa 3 Sdn Bhd, the concessionaire for the said highway.

[3] As there were two lots of land involved, held under Geran 80178 Lot 54992 ('Lot 54992') and Geran 80176 Lot 54993 ('Lot 54993') respectively in the Mukim of Kuala Lumpur, the applicant had rightly filed two applications under s 37 of the Land Acquisition Act 1960, by way of Form N, to require the Land Administrator to refer its objections to the High Court regarding the amount of compensation awarded by the respondent.

[4] There was no dispute about land value because the applicant agreed that the valuation of RM10,000 per sqmt used by the respondent in his award was the market value as at 30 December 2020, which was the date of publication of the second s 8 declaration in the Government *Gazette*. An earlier declaration in year 2017 had lapsed. The issue for hearing and decision was only regarding the effect of 'injurious affection' on the remaining land.

[5] Since the two land references were regarding adjacent lands belonging to the same proprietor, I agreed that they ought to be heard together. I was aided by two assessors, namely Sr Mohd Zamri bin Awang and Sr Ery Zuwardi bin Anuar, and guided by their professional reports, this court decided to award *total additional compensation* of *RM3,450,605.60*, in the form of two awards for additional compensation, of *RM2,375,989.60* for *Lot 54992* and

RM1,074,616 for *Lot 54993* respectively, with late payment charges at 5%pa from the date of Form K till date of payment. I am mentioning the total additional compensation awarded because the two lots of land are adjacent and could be developed as a single development, and this court had considered this fact as a positive factor in favour of the applicant.

[6] The original total amount awarded by the respondent was *RM7,217,986.95*. Thus, after adding the additional compensation of *RM3,450,605.60* awarded by this court for the partial acquisition of the two lots of land (excluding late payment charges), *the total amount of compensation* added up to a handsome sum of *RM10,668,592.55*.

BACKGROUND FACTS

[7] The respondent in fact issued declarations twice under s 8 of the LAA 1960 to partially acquire those two lots of land. The first declaration was published in the Government *Gazette* on 27 April 2017. As the land acquisition was not completed within two years, this declaration lapsed by operation of s 8(4) of the LAA 1960 on 27 April 2019. The second declaration published on 30 December 2020 is applicable in this case. A screenshot of the Schedule (*Jadual*) is shown below:

JADUAL

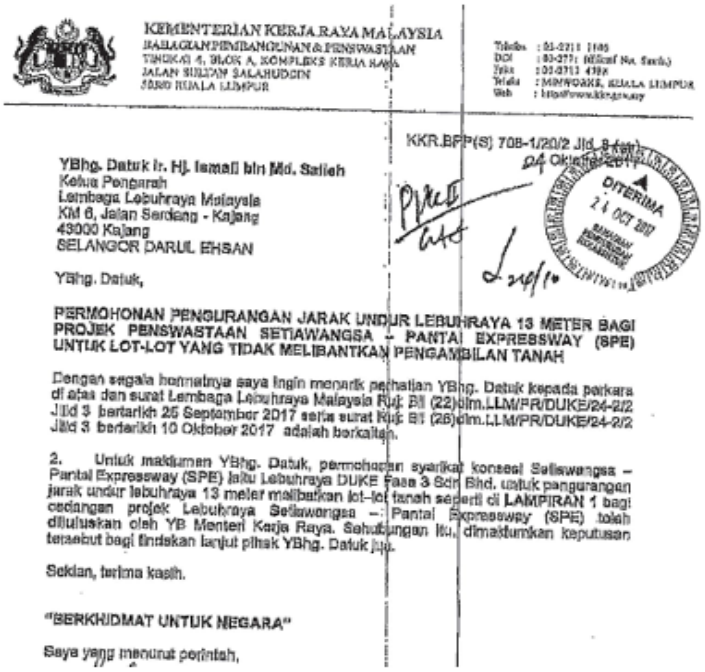
Daerah—Wilayah Persekutuan Kuala Lumpur. Mukim—Kuala Lumpur.

No. Lot	Hakmilik atau Penduduk	Tuanpunya Berdaftar atau Penduduk yang Direkodkan	Keluasan	Anggaran Keluasan yang Hendak Diambil
	GRN		Meter Persegi	Meter Persegi
54993	80176	Kaochern Corporation Sdn. Bhd. (No. Syarikat: 528580-W) 1/1 bhg.	957	192.171
54992	80178	Kaochern Corporation Sdn. Bhd. (No. Syarikat: 528580-W) 1/1 bhg.	2251	487.041

Bertarikh 18 Disember 2020 *Pengarah Negeri*
[PTGKL/9/PBT8A/2020/1]

[8] As the partial acquisition was to be for the purpose of 'Lebuhraya Setiawangsa — Pantai Expressway (SPE) Tambahan', it was possible for the Highway Authority of Malaysia (translated as 'Lembaga Lebuhraya Malaysia' and commonly referred to by its abbreviation as 'LLM') to support applications to reduce the setback distance, subject to approval by the Honourable Minister for Public Works (YB Menteri Kerja Raya). The statutory setback requirement is 13meter.

[9] The concessionaire did apply in year 2017 and obtained approval from the honourable Minister, with LLM's endorsement, to reduce the setback distance for Lot 54992 to 1.84 metres. For Lot 54993, the setback distance was approved to be reduced to only 1.5 metres. This was clearly stated in the Ministry of Public Works's letter to LLM dated 24 October 2017. It was highlighted by learned counsel for the applicant that the approval then was intended for land not subjected to any land acquisition, as the words 'yang tidak melibatkan Pengambilan Tanah' are self-explanatory. A copy of the said letter and its schedule are shown below:



KEMENTERIAN KERJA RAYA MALAYSIA
BAHAGIAN PEMBANGUNAN & PENSWASTAAN
TINGKAT 4, BLOK A, KOMPLEKS KERJA RAYA
JALAN SULTAN SALAHUDDIN
50580 KUALA LUMPUR

KKR.BPP(S) 708-1/20/2 Jld. 3 (16)
24 Oktober 2017

YBhg. Datuk Ir. Hj. Ismail bin Md. Salleh
Ketua Pengarah
Lembaga Lebuhraya Malaysia
KM 6, Jalan Serdang - Kajang
43000 Kajang
SELANGOR DARUL EHSAN

DITERIMA 27 OCT 2017

YBhg. Datuk,

PERMOHONAN PENGURANGAN JARAK UNDUR LEBUHRAYA 13 METER BAGI PROJEK PENSWASTAAN SETIAWANGSA – PANTAI EXPRESSWAY (SPE) UNTUK LOT-LOT YANG TIDAK MELIBATKAN PENGAMBILAN TANAH

Dengan segala hormatnya saya ingin menarik perhatian YBhg. Datuk kepada perkara di atas dan surat Lembaga Lebuhraya Malaysia Ruj: Bil (22)dlm.LLM/PR/DUKE/24-2/2 Jld 3 bertarikh 25 September 2017 serta surat Ruj: Bil (26)dlm.LLM/PR/DUKE/24-2/2 Jld 3 bertarikh 10 Oktober 2017 adalah berkaitan.

2. Untuk maklumat YBhg. Datuk, permohonan syarikat konsesi Setiawangsa – Pantai Expressway (SPE) iaitu Lebuhraya DUKE Fasa 3 Sdn Bhd. untuk pengurangan jarak undur lebuhraya 13 meter melibatkan lot-lot tanah seperti di LAMPIRAN 1 bagi cadangan projek Lebuhraya Setiawangsa – Pantai Expressway (SPE) telah diluluskan oleh YB Menteri Kerja Raya. Sehubungan itu, dimaklumkan keputusan tersebut bagi tindakan lanjut pihak YBhg. Datuk [illegible].

Sekian, terima kasih.

"BERKHIDMAT UNTUK NEGARA"

Saya yang menurut perintah,

Permohonan Pengurangan Jarak Undur Lebuh Raya 13 Meter bagi Cadangan Projek Penswastaan Setiawangsa – Pantai Expressway (SPE) yang Tidak Melibatkan Pengambilan Tanah.

Bil	No. Lahsar	Lot / Rancang	Struktur / Tiada	Kes Pengecualian	Jarak Undur Disediakan (m)	Ulasan Jurupunding / Konsesi
	SEKSYEN 9 (BERINCIR – SALAK)					
1.	JP/14/SEC9/SEL/7558/WPKL/LLA/02-3	485582 (CH 430.00)	Tiada struktur	5.1.2	5.760	• Kawasan komersil
2.	JP/14/SEC9/SEL/7558/WPKL/LLA/02-3	485786 (CH 590.00)	Tiada struktur	5.1.2	1.050	• Kawasan komersil
3.	JP/14/SEC9/SEL/7558/WPKL/LLA/02-3	485787 (CH 630.00)	Tiada struktur	5.1.2	1.195	• Tapak komersil
4.	JP/14/SEC9/SEL/7558/WPKL/LLA/02-3	54993 (CH 630.00)	Tiada struktur	5.1.2	1.500	• Tapak komersil
5.	JP/14/SEC9/SEL/7558/WPKL/LLA/02-3	54992 (CH630.00)	Tiada struktur	5.1.2	1.840	• Tapak komersil
6.	JP/14/SEC9/SEL/7558/WPKL/LLA/02-3	2459 (CH 660.00)	Tiada struktur	5.1.2	1.776	• Tapak komersil

A THE APPLICANT'S CLAIM FOR INJURIOUS AFFECTION OF ITS REMAINING LAND

[10] Whilst the applicant has agreed to accept the valuation of RM10,000 per sqmt decided by the respondent in his award as the market value as at 30 December 2020, it put up a robust claim for compensation for 'injurious affection' caused to its remaining land.

[11] The heads of claims put up by the applicant were for injurious affection caused by the setback that would be required from the new boundary of the remaining land, injurious affection due to 'reduction of gross development value and increase in building costs', injurious affection due to 'loss of visibility from the Federal Highway' and early possession of land because the acquiring party had entered the acquired part of the land early, before the acquisition was completed. Early entry in urgent cases is permissible under the LAA 1960; the issue is about compensation to be awarded.

[12] The applicant submitted, inter alia, that the approval granted by the Minister for Public Works in year 2017 was not for the purpose of land to be acquired, that the s 8 declaration published in the Government *Gazette* on 27 April 2017 had lapsed by operation of law on 27 April 2019, and there was no approval for setback reduction granted prior to the current acquisition which was based on a second declaration published on 30 December 2020.

[13] In short, the applicant's stand is that there was no valid approval by the said Minister to reduce the setback distance to the only 1.7 metres for Lot 54992 and 1.5 metres for Lot 54993 respectively, and therefore compensation for the area required to comply with the setback requirement ought to be awarded.

[14] The applicant had sought compensation for injurious affection caused by the setback required, a high percentage of 70% of the value of the setback area, which it calculated as 462.27sqmt.

[15] It was also submitted that there would be significant differences in the future development of the two lots of adjacent land due to the changes caused by the partial acquisition that diminished their size. A report prepared by a professional architect, one Mr Thirilogachandran from Messrs TLC, was exhibited in his affidavit filed in these proceedings, to claim injurious affection due to 'reduction of gross development value and increase in building costs'. Under this head, a sum of RM9.32m was claimed.

[16] As for injurious affection due to 'loss of visibility from the Federal

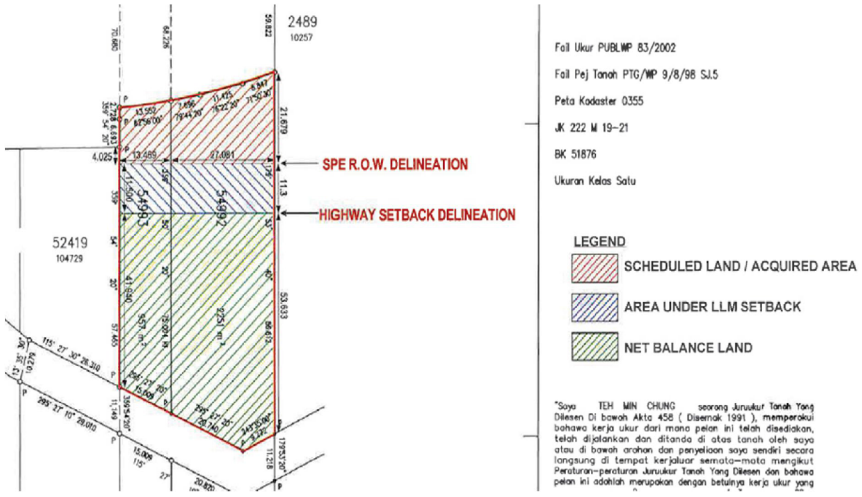
Highway' the applicant sought a sum equivalent to 20% of the value of the remaining land as compensation.

[17] Finally, as it was undisputed that the acquiring party did take possession of the required part of the two lots of land early, compensation was sought under this head of claim. The applicant had submitted that the date of early possession was 3 February 2017 left it to the respondent to assess the amount. A claim of late payment charges at 5%pa on the compensation was also sought, to be computed from 3 February 2017 until date of payment.

[18] As authority for claiming compensation for early possession of land being taken by the acquiring party, the applicant relied on *Amitabha Guha (as beneficiary for the estate of Madhabendra Mohan Guha) v Pentadbir Tanah Daerah Hulu Langat* [2021] 4 MLJ 1.

ANALYSIS OF THE FACTS AND LAW

[19] Since a picture is said to be worth a thousand words, having the relevant part of a survey plan that shows the partial acquisition of the two lots of land would be helpful. It is reproduced below:



[20] The part shaded in red shows the acquired area of the two adjacent lots of land. It could be seen that the partial acquisition had caused the width/depth of the two lots to be reduced. The width/depth of Lot 54992 was reduced by about 21.6 metres while the width/depth of adjacent Lot 54993 was reduced

by about 13.5 metres. The total remaining area is 2,528.788sqmt (*1,763.959sqmt in Lot 54992 + 764.829sqmt in Lot 54993*).

[21] The part shaded in blue is claimed by the applicant as the 'setback area' required for future development to comply with the statutory requirement to set back the building (to be built) from the boundary line, and to justify its claim for 70% of the value of this area. Thus, the issue of approval for reduction of the setback distance became a highly contentious issue due to its great significance. *If* the approval granted in October 2017 by the Public Works Minister for reduction of the setback distance is applicable, it would allow the applicant to plan the development of the land with a setback distance of only 1.84 metres for Lot 54992 and 1.5 metres for Lot 54993 respectively from the edge of the highway mainline to the edge of the highway reserve instead of the statutory distance of 13 metres — which would also mean that injurious affection caused to the remaining land would be minimised.

[22] Now, if the more recent endorsement by LLM to further reduce the setback distance for Lot 54992 to 1.7 metres is to be allowed, it would further minimise the injurious affection caused.

[23] On the issue of approval for reduction of setback, I hold that this court is bound to regard it as a situation of no final approval being granted by the Honourable Minister for Public Works even though there is a very high likelihood of such approval being granted in the future. My reasons for making this finding are as stated below.

[24] First, it was erroneous to regard the LLM as having the power to approve the reduction of setback. Regulation 2(1) and 2(3) of the Highway Authority Malaysia (Set Backs of Highway) Regulations 2007 states as follows:

> (1) Any person preparing a design for the construction of a highway for the purposes of this Act *shall provide a distance of 13 meters* from the edge of the highway mainline to the edge of the highway reserve on both sides of the highway main line *as setback of the highways*;
>
> ...
>
> (3) Notwithstanding subregulation (1), the Authority may, *with the approval of the Minister*, on grounds of public interest, provide a distance of *a setback* of a highway *which is less* than the distance prescribed in subregulation (1). (Emphasis added.)

[25] As could be seen from reg 2(3) above, the power to provide a distance of setback less than 13 metres is 'with the approval of the Minister, on grounds of public interest'. Though the Minister would no doubt rely on the recommendation of LLM to approve any such reduction of setback, the ultimate power is vested on the Minister. There was no such approval granted

by the Minister as at the date of hearing of these proceedings.

[26] The evidence in this case shows that whilst the approval required for reduction of setback distance for Lot 54993 may remain the same as approved in year 2017, ie at 1.5 metres, the setback distance for Lot 54992 would have to be further reduced to 1.7 metres to minimise the injurious affection caused to the remaining land in both lots. It was in evidence that LLM had in fact endorsed the further reduction of setback distance for Lot 54992, as could be seen in the following excerpts of documents issued by LLM:

3. Sehubungan dengan itu, berdasarkan semakan dan mengambilkira pengesahan Jurutera Perunding, pengurangan rezab ini tidak memberi impak yang besar ke atas rekabentuk lebuhraya dan langkah-langkah pencegahan *(mitigation)* sewajarnya boleh dilaksanakan. Bagi memastikan maklumat-maklumat dan rekod-rekod selaras dengan keadaan ditapak dan permohonan pindaan pengurangan jarak undur juga memenuhi kriteria yang ditetapkan didalam *Garis Panduan Jarak Undur Lebuhraya* (LLM/PJU/01/08), *Peraturan-Peraturan Lembaga Lebuhraya Malaysia (Jarak Undur Lebuh Raya) 2007 dan Peraturan-Peraturan Lembaga Lebuhraya Malaysia (Jarak Undur Lebuh Raya) (Pindaan 2012)*, maka pihak LLM menyokong supaya pindaan pengecualian diberikan terhadap lot yang dipohon.

B : JUSTIFIKASI PERMOHONAN PENGURANGAN JARAK UNDUR 13 METER
1. Permohonan pengurangan jarak undur adalah berdasarkan kepada **Klausa 5.1.2** Garis panduan Jarak Undur Lebuhraya, iaitu Lebuhraya yang melalui kawasan komersial atau tanah untuk tujuan komersial yang telah diwartakan ataupun yang telah mendapat kelulusan daripada pihak berkuasa tempatan.
2. Jarak undur 13 meter yang disediakan untuk tanah ini ialah sepanjang 1.700 meter. Oleh itu permohonan pengurangan jarak undur ialah 11.300 meter.
3. Permohonan pengurangan jarak undur ini adalah pindaan kepada kelulusan pengurangan jarak undur terdahulu yang telah diluluskan oleh Kementerian Kerja Raya pada 24 Oktober 2017 di bawah kategori lot-lot yang tidak melibatkan pengambilan tanah. Jarak undur disediakan yang diluluskan pada ketika itu ialah 1.840 meter.
4. Pengurangan Jarakundur ini tidak menyebabkan apa-apa perubahan atau kesan pada rekabentuk lebuhraya yang dicadangkan.

[27] Even though LLM has recommended and endorsed the reduction of the new setback distance for both Lot 54992 and Lot 54993, it is not open to this court to regard a recommendation or endorsement by LLM as an approval

— for as pointed out above, the ultimate power to approve is vested in the office of the Minister himself. An endorsement by LLM shall remain just as endorsement unless approval is granted by the Minister (see reg 2(3) cited above).

[28] Even though there was no approval by the Minister applicable to both lots for the *post-acquisition situation*, the unequivocal endorsement issued by LLM has resulted in a high probability of the applicant receiving approval from the Minister in the future, to reduce the setback distance to 1.5 metres and 1.7 metres for Lot 54993 and Lot 54992 respectively. The assessors' professional opined to me during our discussion that this is a factor that we ought to consider in deciding the diminution in value of the remaining land, for the purpose of assessing compensation for injurious affection. I agree with their practical viewpoint.

[29] I am fully aware that the Federal Court in *Semenyih Jaya Sdn Bhd v Pentadbir Tanah Daerah Hulu Langat and another case* [2017] 3 MLJ 561 had clarified the approach to be taken by this court in hearing land reference matters. We have duly considered all the heads of claims brought by the applicant — which I had summarised above. I am also aware that I may seek guidance from the two assessors, must consider their reports but am not bound to follow either of them, provided that I have valid reasons to depart from their reports. A copy each of the reports prepared by the learned assessors to aid me, are attached hereinbelow for reference.

CONCLUSION AND DECISION

[30] Since the applicant has agreed to accept the valuation of RM10,000 persqmt used by the respondent, this rate was maintained.

[31] On the *issue of early entry into the land*, I agree with the assessors that the rental method used by the respondent was reasonable. It was by applying a rate of RM11 per sqmt per month for a period of 57 months, and awarding *RM305,374.65 for Lot 54992* and *RM120,492.30 for Lot 54993*. As a matter of fact, I was under the erroneous impression during the hearing that a lower rate of RM9.30 per sqmt per month was used. Based on the advice of the assessors, I was of the view that rental of vacant land in that area at a rate of RM9.30 per sqmt per month would be fair. Hence, the rate of RM11 per sqmt per month was in fact on the high side. However, since there was no land reference filed by the acquiring party, this head of award was maintained.

[32] I decided that compensation for injurious affection ought to be separated into three parts instead of awarding a single lump sum. I so decided because I agree with the Government assessor's view on this approach as being

capable of achieving greater clarity and fairer results. A

[33] Even though we considered the remaining land in Lot 54992 and its adjacent Lot 54993 as a single plot of land — which was a factor in favour of the applicant — when deliberating on the issues of injurious affection to the remaining land, we decided to apportion the additional compensation into two separate awards — since two separate land reference were filed, which we had heard together. B

[34] Based on the plan shown in para [19] above, we worked out the 'setback area' of Lot 54992 to be *306.0153sqmt* (27.081 metres x 11.3 metres = 306.0153sqmt). As for *Lot 54993*, *we worked out the* 'setback area' to be *154.8935sqmt* (13.469 metres x 11.5 metres = 154.8935sqmt). C

[35] After discussion with both assessors, I agree with the view of the Government assessor that the first part of injurious affection which was caused to the 'setback area' was a reduction in its market value by approximately thirty percent (30%). Thus, for Lot 54992, a sum of *RM918,045.90* (RM10,000 x 30% x 306.0153sqmt) was awarded while for Lot 54993, a sum of *RM464,680.50* (RM10,000 x 30% x 154.8935sqmt) was awarded. D E

[36] As for the second part of injurious affection, which was impairment due to 'loss of visibility from the Federal Highway', we were of the view that the *loss was minimal* for the remaining land because there was no serious obstruction of view. Further, any building erected there in the future would be multi-storey and quite clearly visible from all angles. Therefore, this court decided that the injurious affection caused to by the 'loss of visibility' should, at most, be five percent of the value of the remaining area less the setback area. F

[37] By using 5% as the diminution in value, this court awarded as follows: for Lot 54992, a sum of *RM728,971.85 for the remaining area of 1,457.9437sqmt*, ie after deducting 306.0153sqmt from the remaining area of 1,763.959sqmt, while for Lot 54993, a sum of *RM304,967.75 was awarded for the area of 609.9355sqmt* ie after deducting 154.8935sqmt from the remaining area of 764.829sqmt in Lot 54993. For the avoidance of doubt, the 'setback area' was deducted because it had already received an award based on a 30% diminution in value. If the Minister for Public Works does grant the approval in the future — as highly recommended by LLM — the loss of visibility would be further minimised because the setback distance would be much less. G H I

[38] I agree with the assessors that the third part of injurious affection would be the impairment on the remaining land. Under this head, I also agree with the assessors, and decided that the injurious affection under this head of claim should, at most, be five percent of the remaining area less the setback area.

A **[39]** Hence, under this head of 'impairment on the remaining land', I decided that for Lot 54992, a sum of *RM728,971.85 for the remaining area of 1,457.9437sqmt*, ie after deducting 306.0153sqmt from the remaining area of 1,763.959sqmt should be awarded. As for Lot 54993, applying the same five percent, a sum of *RM304,967.75 was awarded for the area of 609.9355sqmt*.

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[40] Based on the reports prepared by the assessors and our discussion, I was satisfied that the awards for injurious affection, which this court has divided into three parts, would adequately compensate the applicant and satisfy art 13 of the Federal Constitution. Those two lots of land could still be jointly developed in the future. There was no severance of those two lots due to the partial acquisition. They are still adjoining each other and their shape are still regular, ie not turned into an irregular or triangular shape.

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D **[41]** By adding up the respective sum stated above, a *total additional compensation* of *RM3,450,605.60*, was ordered in the form of two awards: *RM2,375,989.60* for *Lot 54992* and *RM1,074,616* for *Lot 54993*.

[42] As for late payment charges, I declined the applicant's prayer to order late payment charges to run from year 2017. In exercise of my discretion under s 48 of the LAA 1960, I decided to issue the usual order: to award late payment charges at 5%pa on the total additional compensation, to be computed from the date of issuance of Form K till date of payment. I am of the view that this is fair because a generous award for injurious affection caused to the 'setback area' had been issued to the applicant even though LLM had already endorsed the reduction in the setback distance to 1.7 metres for Lot 54992 and 1.5 metres for Lot 54993 respectively. The compensation for injurious affection caused to the 'setback area' was ordered, as explained above, due to the legal position as at the date of hearing of these land reference proceedings.

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[43] Since the applicant has succeeded in obtaining additional compensation, it was entitled to receive a refund of its deposit of RM3,000, and I so ordered.

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[44] Lastly, as is the practice of land reference courts in Malaysia, costs payable to both assessors are to be borne by the applicant. I duly ordered RM1,000 costs to be paid by the applicant to each of them within 14 days, bearing in mind that they had spent precious hours in this court to assist in the hearing, answering my queries and preparing their respective reports, which culminated in the applicant being awarded *additional compensation* of *RM3,450,605.60* plus late payment charges.

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SULIT

LAPORAN PENGAPIT HAKIM KERAJAAN
NO. RUJUKAN TANAH :
WA-15-13-04/2022 & WA-15-14-04/2022

DALAM MAHKAMAH TINGGI MALAYA KUALA LUMPUR
PENGAMBILAN TANAH SEBAHAGIAN TANAH LOT 54992, GERAN 80178 DAN LOT 54993, GERAN 80176, MUKIM KUALA LUMPUR, DAERAH KUALA LUMPUR WILAYAH PERSEKUTUAN KUALA LUMPUR UNTUK PROJEK LEBUHRAYA SETIAWANGSA-PANTAI EXPRESSWAY (SPE) (TAMBAHAN)

ANTARA

KAOCHERN CORPORATION SDN. BHD. ... PEMOHON
(PEMILIK BERDAFTAR – 1/1 BAHAGIAN)

DAN

PENTADBIR TANAH WILAYAH PERSEKUTUAN KUALA LUMPUR ... RESPONDEN

Yang Arif Hakim	:	Y.A. Tuan Gan Techiong
Pengapit Kerajaan	:	Sr Mohd Zamri bin Awang
Pengapit Swasta	:	Sr Ery Zuwardi bin Anuar
Pemohon	:	Kaochern Corporation Sdn Bhd - (1/1 bahagian)
Responden	:	Pentadbir Tanah Wilayah Persekutuan Kuala Lumpur
Peguam Pemohon	:	Tetuan Steven Thiru & Sudar Partnership
Penasihat Undang-Undang Responden	:	Peguam Persekutuan, Jabatan Peguam Negara Malaysia, Cawangan Wilayah Persekutuan Kuala Lumpur
Penilai Pemohon	:	Radhakrishnan a/l Rengasamy Jones Lang Wootton Sdn Bhd
Penilai Responden	:	Aqeela binti Mohd Fauzi Jabatan Penilaian dan Perkhidmatan Harta Kuala Lumpur

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SULIT

1.0 FAKTA KES

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Pengambilan tanah untuk tujuan awam iaitu Projek Lebuhraya Setiawangsa-Pantai (SPE) (Tambahan) di atas sebahagian Lot 54992, Geran 80178 dan Lot 54993, Geran 80176, Mukim Kuala Lumpur, Daerah Kuala Lumpur, Wilayah Persekutuan Kuala Lumpur.

Bil	Perkara	Fakta Kes
1.1	Alasan bantahan:	**Tuntutan untuk Kesan Kemudaratan (Injurious Affection)** 1. Pampasan yang ditawarkan untuk bahagian tanah yang diambil tidak mencerminkan harga tanah nilai pasaran dan nilai-nilai tanah di sekitarnya. 2. Pemilik tanah dinafikan haknya untuk mendapatkan pampasan yang munasabah dan berpatutan ke atas kawasan jarak undur Lebuhraya (yang berada di luar bahagian tanah berjadual) seperti yang tertera di dalam pelan yang dilampirkan di dalam Laporan Penilaian Tetuan Jones Lang Wootton bertarikh 26.3.2021 (Appendix G) untuk kesan kemudaratan seperti yang diperuntukkan di dalam Perenggan 2(d) Jadual Pertama. Akta Pengambilan Tanah 1960. Secara alternatifnya kawasan jarak undur Lebuhraya (yang sepatutnya ada berada/diperuntukkan di dalam bahagian tanah berjadual) sewajarnya dicadangkan kepada pemilik tanah sebagai tanah berjadual tambahan dengan dengan pampasan berdasarkan harga tanah nilai pasaran diberikan kepada pemilik tanah. 3. Pemilik tanah dinafikan haknya untuk mendapat pampasan yang munasabah bagi baki tanah untuk kesan kemudaratan tanah seperti yang diperuntukkan di dalam Perenggan 2(d) Jadual Pertama, Akta Pengambilan Tanah 1960, akibat kemorosotan (impairment) ke atas pembangunan yang akan dijalankan di atas baki tanah dan kemorosotan disebabkan oleh kehilangan penglihatan (loss of visibility) pada baki tanah. 4. Pentadbir Tanah telah menyatakan dalam sesi siasatan/perbicaraan bahawa beliau tidak akan membuat keputusan terhadap tuntutan pemilik tanah untuk kesan kemudaratan tanah seperti yang dinyatakan dalam alasan-alasan 2 dan 3 di atas

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Bil	Perkara	Fakta Kes
		dan telah menyatakan kepada pemilik tanah untuk merujuk tuntutan-tuntutan tersebut kepada Mahkamah untuk keputusan. 5. Pemilik Tanah dinafikan haknya untuk mendapat pampasan yang munasabah dan berpatutan ke atas fizikal awal (early physical possession) ke atas bahagian tanah yang diambil.
1.2	Pemilik Berdaftar	Kaochern Corporation Sdn Bhd – (1/1 bahagian)
1.3	Tarikh Warta	**28 Disember 2020** (Warta Kerajaan Negeri Wilayah Persekutan No. 21752, di bawah Seksyen 4, Akta Pengambilan Tanah 1960) **30 Disember 2020** (Warta Kerajaan Negeri Wilayah Persekutan No. 21847, di bawah Seksyen 8, Akta Pengambilan Tanah 1960)
1.4	Tarikh Nilaian	**28 Disember 2020** iaitu berdasarkan tarikh warta Seksyen 4 seperti mana ditetapkan di bawah Perenggan 1 (1)(a), Jadual Pertama, Akta Pengambilan Tanah 1960 (Pindaan).
1.5	Luas Tanah	Lot 54992: 2,251.00 meter persegi Lot 54993: 957.00 meter persegi
1.6	Luas Tanah Diambil	Lot 54992: 487.041 meter persegi Lot 54993: 192.171 meter persegi
1.7	Luas Tanah Baki	Lot 54992: 1,763.959 meter persegi Lot 54993: 764.829 meter persegi
1.8	Pegangan	Selama-lamanya
1.9	Kategori Kegunaan Tanah	Bangunan
1.10	Syarat Nyata	Tiada
1.11	Sekatan Kepentingan	Tiada

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2.0 NILAIAN JPPH, TUNTUTAN PEMOHON & AWARD PENTADBIR TANAH

Bil.	Perkara	Nilaian JPPH	Tuntutan Pemohon Melalui Laporan Penilai Swasta	Award Pentadbir Tanah
2.1	a) Nilai Tanah – Nilai Pasaran Para 2 (a)	Lot 54992: 487.0410 mp @ RM9,000.00 smp Lot 54993: 192.171 mp @ RM9,000.00 smp Jumlah : **RM6,112,908.00**	Lot 54992: 487.0410 mp @ RM11,840.00 smp Lot 54993: 192.171 mp @ RM11,840.00 smp Jumlah : **RM8,041,870.08**	Lot 54992: 487.0410 mp @ RM10,000.00 smp Lot 54993: 192.171 mp @ RM10,000.00 smp Jumlah : **RM 6,792,120.00**
	b) Nilai Bangunan	**Tiada**	**Tiada**	**Tiada**
2.2	Kenaikan Nilai (Betterment) - Perenggan 2(b)	Tiada	Tiada	Tiada
2.3	Pecah Pisah (Severance) - Perenggan 2(c)	Tiada	Tiada	Tiada
2.4	Kesan Mudarat (Injurious Affection) – Perenggan 2 (d)			
	i) SPE Highway Reserved Provision.	Tiada	RM3,831,293.76	Tiada
	ii) Impairment on the development to be undertaken on the balance land.	Tiada	RM2,994,085.00	Tiada
	iii) Impairment due to loss of visibility on the balance land.	Tiada	RM5,988,169.98	Tiada
2.5	Kos Sampingan (Incidental Costs) – Perenggan 2 (e)			
	i) Kos masuk awal	RM328,230.00 (Kedua-dua lot)	Ditentukan kemudian berdasarkan amaun award	Lot 54992: RM 305,374.65 Lot 54993: RM 120,492.30
2.6	Kesan Pemulihan - Perenggan 2(f)	Tiada	Tiada	Tiada
	Jumlah Keseluruhan :	**RM6,441,138.00**	**RM20,885,418.82**	**RM7,217,986.95**

SULIT

3.0 FAKTA PENILAIAN

3.1 Penilaian
Seperti dalam Jadual 2 di atas.

3.2 Tarikh Penilaian
Tarikh penilaian Penilai Pemohon dan Penilai Responden ialah **28 Disember 2020**, iaitu berdasarkan tarikh warta Seksyen 4, Warta Kerajaan Negeri Wilayah Persekutuan Nombor 21752.

3.3 Kaedah Penilaian
Penilai Pemohon dan Penilai Responden menggunakan Kaedah Perbandingan.

3.4 Asas Nilaian
Nilaian berasaskan kepada prinsip bahawa harga jualan atau balasan yang dibayar untuk sesuatu harta tanah yang sebanding merupakan nilai pasaran.

4.0 ULASAN PENGAPIT KERAJAAN

Nota: Ulasan dan pertimbangan yang diberi adalah terhad kepada hujahan dan dokumen yang telah dikemukakan oleh kedua pihak (pemohon dan responden).

Setelah meneliti hujahan dan dokumen yang dikemukakan, saya membuat ulasan dan merumuskan seperti berikut :-

4.1 Nilaian Tanah

Berdasarkan kepada perenggan akhir muka surat 4, Laporan Balas Penilai Pemohon, pemilik tanah terjadual Kaochern Corporation Sdn Bhd **BERSETUJU** dengan **award Pentadbir Tanah untuk nilai pasaran tanah @ RM10,000.00 semeter persegi.**

4.2 Nilaian Kesan Mudarat

Penilai Pemohon mohon pampasan kesan mudarat diberikan kepada perkara berikut:

i) SPE Highway Reserved Provision

462.27 meter persegi pada kadar **70%** dari nilai pasaran

ii) Impairment on the development to be undertaken on the balance land

2,528.788 meter persegi pada kadar **10%** dari nilai pasaran

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SULIT

iii) Impairment due to loss of visibility on the balance land **2,528.788** meter persegi pada kadar **20%** dari nilai pasaran

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Bahagian yang terlibat adalah seperti pelan di bawah.

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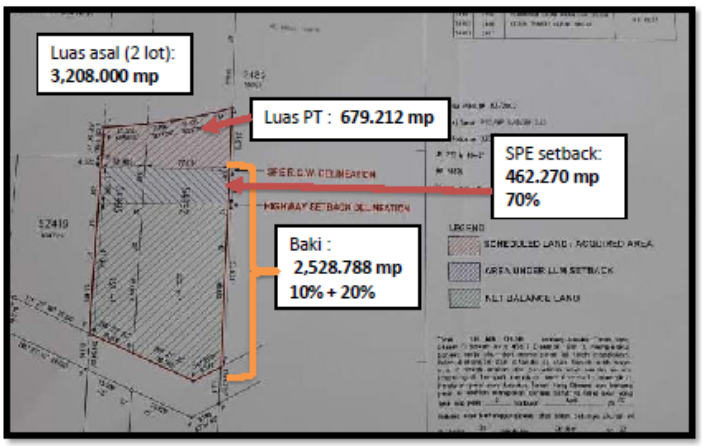

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Berdasarkan pelan ini, didapati bagi perkara (i), pampasan yang dituntut adalah **100%** (70% + 10% + 20%).

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Manakala Penilai Responden tidak mempertimbangkan sebarang pampasan bagi kesan mudarat.

G

Berdasarkan dokumen yang dikemukakan dan penelitian yang dibuat, saya berpandangan wujud kesan mudarat di atas tanah baki dan ia perlu dipertimbangkan.

4.3 Kos Sampingan (Kemasukan awal)

H

Penilai pemohon menuntut bayaran pampasan yang dimuktamadkan dikenakan bayaran *late payment charges* sebanyak 5% dari tarikh masuk sehingga tarikh pampasan dibayar.

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Manakala Penilai Responden mencadangkan bayaran dibuat berdasarkan kadar sewa harta tanah terlibat (tanah perdagangan). Kadar sewa ditentukan dengan merujuk kepada data sewa pasaran sebanding pada tahun kemasukan awal iaitu **RM9.30 semeter persegi**. Data sewa yang digunakan adalah bagi tahun 2016 – 2019.

Saya bersetuju dengan kaedah yang digunakan oleh Penilai Responden. Pampasan bagi kemasukan awal hendaklah merujuk kepada sewaan.

5.0 RUMUSAN

Sebagai kesimpulan, berdasarkan kepada ulasan pengapit kerajaan di Perkara 4.0 di atas, saya berpendapat bahawa jumlah pampasan yang munasabah dan berpatutan bagi **sebahagian Lot 54992, Geran 80178 dan Lot 54993, Geran 80176, Mukim Kuala Lumpur, Daerah Kuala Lumpur, Wilayah Persekutuan Kuala Lumpur** adalah seperti berikut:

i) Nilaian Tanah **RM 6,792,120.00**

Dikekalkan pada kadar RM10,000.00 semeter persegi sebagaimana award Pentadbir Tanah.
Lot 54992 @ RM4,870,410.00
Lot 54993 @ RM1,921,710.00

ii) Kesan Mudarat (untuk ketiga-tiga tuntutan) :

Lot 54992

Pampasan untuk kesan kemudaratan (injurious affection) dibahagikan kepada 3 bahagian iaitu:

a) untuk keluasan baki tanah 306.0153 meter persegi yang diperlukan untuk setback dari lebuhraya, pada kadar 30%, sebanyak **RM918,045.90**;
b) untuk *loss of visibility* pada kadar 5% atas keluasan 1,457.9437 meter persegi sahaja, setelah menolak keluasan 306.0153 meter persegi daripada baki tanah 1,763.959 meter persegi, sebanyak **RM728,971.85**;
c) untuk *impairment* kepada penggunaan baki tanah pada kadar 5% atas atas keluasan 1,457.9437 meter persegi sahaja, setelah menolak keluasan 306.0153 meter persegi daripada baki tanah 1,763.959 meter persegi, sebanyak **RM728,971.85**.

SULIT

RM 2,375,989.60

Lot 54993

Pampasan untuk kesan kemudaratan (injurious affection) dibahagikan kepada 3 bahagian iaitu:

a) untuk keluasan baki tanah 154.8935 meter persegi yang diperlukan untuk setback dari lebuhraya, pada kadar 30%, sebanyak **RM464,680.50**;
b) untuk *loss of visibility* pada kadar 5% atas keluasan 609.9355 meter persegi sahaja, setelah menolak keluasan 154.8935 meter persegi daripada baki tanah 764.829 meter persegi, sebanyak **RM304,967.75**;
c) untuk *impairment* kepada penggunaan baki tanah pada kadar 5% atas atas keluasan 609.9355 meter persegi sahaja, setelah menolak keluasan 154.8935 meter persegi daripada baki tanah 764.829 meter persegi, sebanyak **RM304,967.75**.

RM 1,074,616.00

iii)	**Kos Sampingan (Kemasukan awal)**	**RM 425,866.95**
	Dikekalkan sebagaimana award Pentadbir Tanah. Lot 54992 @ RM 305,374.65 Lot 54993 @ RM 120,492.30	
	Jumlah	**RM 10,668,592.55**
	TOLAK	
	Award Pentadbir yang telah dibayar	RM 7,217,986.95
	Tambahan Pampasan (kedua-dua lot)	**RM 3,450,605.60**
	Lot 54992 @ **RM 2,375,989.60** Lot 54993 @ **RM 1,074,616.00**	

Disediakan Oleh:

SHAMSUL ZAMRI BIN AWANG
Pengapit Hakim Kerajaan
Penilai Berdaftar V- 0799
Tarikh: 10 Jun 2024

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ASSESSOR REPORT
KUALA LUMPUR HIGH COURT
SUIT NO. WA-15-13-04/2022
KAOCHERN CORPORATION SDN BHD
PENTADBIR TANAH WILAYAH PERSEKUTUAN
KUALA LUMPUR
COMPULSORY LAND ACQUISITION ON
LOT NOs. 54992 & 54993, TITLE NOs. GERAN 80178 & 80176
RESPECTIVELY
MUKIM AND DISTRICT OF KUALA LUMPUR
WILAYAH PERSEKUTUAN KUALA LUMPUR
"PROJEK LEBUHRAYA SETIAWANGSA-PANTAI EXPRESSWAY (SPE)
TAMBAHAN"

PRIVATE AND CONFIDENTIAL

Your Ref. : WA-15-13-04/2022 & WA-15-14-04/2022
Our Ref. : V/24-0194
Date : 12 June 2024

Yang Arif Pesuruhjaya Kehakiman Tuan Gan Techiong
Hakim Mahkamah Tinggi NCVC 9
Aras 4, Sayap Kanan
Kompleks Mahkamah Kuala Lumpur
Jalan Tuanku Abdul Halim (Jalan Duta)
50606 Kuala Lumpur

Dear YA Tuan Gan,

ASSESSOR REPORT
KUALA LUMPUR HIGH COURT
SUIT NO. WA-15-13-04/2022 & WA-15-14-04/2022
KAOCHERN CORPORATION SDN BHD
PENTADBIR TANAH WILAYAH PERSEKUTUAN
KUALA LUMPUR
COMPULSORY LAND ACQUISITION ON
LOT NOs. 54992 & 54993, TITLE NOs. GERAN 80178 & 80176
RESPECTIVELY, MUKIM AND DISTRICT OF KUALA LUMPUR
WILAYAH PERSEKUTUAN KUALA LUMPUR
"PROJEK LEBUHRAYA SETIAWANGSA-PANTAI EXPRESSWAY (SPE) TAMBAHAN"

The above matter refers.

We have reviewed both the private and government valuer reports and conducted the necessary investigations on the matter and are pleased to submit herewith our Assessor Report for your perusal.

This Assessor Report is prepared specifically for the stated purpose and should NOT be used for any other purposes without our prior written consent.

Thank you.

Yours faithfully,

Sr ERY ZUWARDI BIN ANUAR, FRISM, MPEPS, MMIEA
Registered Valuer (V573)
Director

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ASSESSOR REPORT
KUALA LUMPUR HIGH COURT
SUIT NO. WA-15-13-04/2022 & WA-15-14-04/2022
KAOCHERN CORPORATION SDN BHD
PENTADBIR TANAH WILAYAH PERSEKUTUAN
KUALA LUMPUR
COMPULSORY LAND ACQUISITION ON
LOT NOs. 54992 & 54993, TITLE NOs. GERAN 80178 & 80176
RESPECTIVELY
MUKIM AND DISTRICT OF KUALA LUMPUR
WILAYAH PERSEKUTUAN KUALA LUMPUR
"PROJEK LEBUHRAYA SETIAWANGSA-PANTAI EXPRESSWAY (SPE) TAMBAHAN"

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1.0 TERM OF REFERENCE

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The subject property comprises two (2) adjoining vacant parcels of development land zoned for commercial use located at Bangsar South, Kuala Lumpur legally identified as Lot Nos. 54992 & 54993, Title Nos. Geran 80178 & 80176, respectively, Mukim and District of Kuala Lumpur, Wilayah Persekutuan Kuala Lumpur. They are held under a freehold interest (grant in-perpetuity).

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The subject property has been acquired by the Federal Government for the purpose of "Projek Lebuhraya Setiawangsa-Pantai Expressway (SPE) Tambahan" under the provision of Section 3(1)(b), Land Acquisition Act, 1960 (Act 486).

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This Assessor Report should be read in conjunction with the Report and Valuation prepared by the Private Valuer, Jones Lang Wootton under Reference No. V/CA/001/21 dated 26 March 2021 and the Government Valuer Report on the same dated 2 March 2021 and subsequently the Rebuttal Reports prepared by both parties.

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2.0 GAZETTE NOTIFICATION

The Preliminary Notice under Section 4 of the Land Acquisition Act, 1960 (Act 486) was published in the Federal Government Gazette No. 21752 dated 28 December 2020 whilst the Declaration of Intended Acquisition under Section 8 of the Land Acquisition Act, 1960 (Act 486) was published in the Federal Government Gazette No. 21847 dated 30 December 2020.

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Therefore, the date of valuation is taken as at the date of Section 4 of the Land Acquisition Act, 1960 (Act 486) i.e 28 December 2020.

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3.0 THE ACQUIRED LAND

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The acquired land of the subject property can be described as follows :-

Property	Land Area Sq Metres	Acquired Land Area Sq Metres	Balance Land Area Sq Metres
Lot 54992	2,251	487.041	1,763.959
Lot 54993	957	192.171	764.829
Total	**3,208**	**679.212**	**2,528.788**

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4.0 THE VALUATION DETAILS

Item	Government Valuer	Private Valuer
Land Value		
Acquired Land Area	RM9,000 psm	RM11,840 psm
1. Lot 54992 – 487.041 sm	RM4,383,369.00	RM5,766,565.44
2. Lot 54993 – 192.171 sm	RM1,729,539.00	RM2,275,304.64
Total	RM6,112,908.00	RM8,041,870.08
Injurious Affection		
1. SPE Highway Buffer Setback	-	RM3,821,293.76
2. Impairment on Development on the Balance Land	-	RM2,984,085.00
3. Impairment due to Loss of Visibility on the Balance Land	-	RM5,998,169.98
Other Claims - Illegal Possession	Ground Rental for 46 mths RM328,230.00	Late Payment Charges @ 5% of RM20,855,418.82 from the date of possession till date of award
Grand Total	**RM6,641,138.00**	**RM20,855,418.82**

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5.0 THE LAND ADMINISTRATOR AWARDS

The Land Administrator has offered and awarded compensation on the affected land as follows :-

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Items	Awards
Land Value	
Acquired Land Area	RM13,000 psm
1. Lot 54992 – 487.041 sm	RM4,870,410.00
2. Lot 54993 – 192.171 sm	RM1,921,710.00
Total	RM6,792,120.00
Injurious Affection	
1. SPE Highway Buffer Setback	-
2. Impairment on Development on the Balance Land	-
3. Impairment due to Loss of Visibility on the Balance Land	-
Other Claims - Illegal Possession	Ground Rental for 57 mths RM425,866.95
Grand Total	**RM7,217,986.95**

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6.0 BASIS OF VALUATION

Both parties have used similar basis of valuation which is market value of the acquired land as determined in accordance with Part 1 of the First Schedule of the
B Land Acquisition Act, 1960 (Act 486).

In arriving to the market value, they have adopted Comparison Method of Valuation by comparing and adopting, as a yardstick, recent sales transactions of comparable properties in the locality.
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The characteristics, merits and demerits of these properties are noted and appropriate adjustments thereof are then made to arrive at the capital value of the subject property.

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7.0 ASSESSOR POINTS OF VIEW

In arriving at the Market Value of the subject property, we have adopted the
E **Comparison Method** of valuation.

The **Comparison Method** entails critical analyses of recent evidence of values of comparable properties in the neighbourhood and making adjustment for differences. In this valuation, we have made comparison with similar vacant
F parcels of commercial potential development land located in the neighbourhood.

The Government Valuer has used five (5) sale evidences to arrive at the opinion of market value while the Private Valuer has adopted four (4) sale evidences. There
G are two (2) sales evidence used are common sales by both valuers.

However, the owner has accepted the market value of RM10,000 per square metre awarded by the Land Administrator totalling a compensation of RM6,792,120.00 on the scheduled land. We also at the opinion that injurious affection on the SPE

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highway buffer setback should also be considered based on the following before and after formula calculation.

Lot 54992				
Before Land Acquisition				
2,251.00 sq m	@	RM10,000.00 per sq m	=	RM22,510,000.00
After Land Acquisition				
1. SPE Buffer Setback				
306.0153 sq m	@	RM10,000.00 per sq m		
		20%	=	RM612,030.60
2. Impairment on Balance Land				
1,457.9437 sq m	@	RM10,000.00 per sq m		
		5%	=	RM728,971.85
3. Impairment on Visibility				
1,457.9437 sq m	@	RM10,000.00 per sq m		
		5%	=	RM728,971.85
		Total Injurious Affection		RM2,069,974.30
Lot 54993				
Before Land Acquisition				
957.00 sq m	@	RM10,000.00 per sq m	=	RM9,570,000.00
After Land Acquisition				
1. SPE Buffer Setback				
154.8935 sq m	@	RM10,000.00 per sq m		
		20%	=	RM309,787.00
2. Impairment on Balance Land				
609.9355 sq m	@	RM10,000.00 per sq m		
		5%	=	RM304,967.75
3. Impairment on Visibility				
609.9355 sq m	@	RM10,000.00 per sq m		
		5%	=	RM304,967.75
		Total Injurious Affection		RM919,722.50

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On the other claim, we note that the subject property has been illegally entered and possessed from 2017 to 2020. The Government Valuer has estimated a period of 46 months on illegal possession whilst the Land Administrator has adopted 57 months.

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The Government Valuer ground rental for the period of 46 months is RM10.50 per square metre calculated on the acquired land area. The Land Administrator has awarded a compensation of RM11 per square metre on the acquired land area over a period of 57 months.

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The Private Valuer, on the other hand, has used late payment interest basis of calculation on this illegal possession at rates of 5% over a period from the date of possession until the date of award by the High Court.

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We are of the opinion that the Land Administrator awards at RM11 per square metre is fair compensation for illegal possession calculated as follows :-

Lot 54992
487.041 @ RM 11.00 per sq metre @ 57 months = RM 305,374.65

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Lot 54993
192.171 @ RM 11.00 per sq metre @ 57 months = RM 120,492.30

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Our Ref : VI24-0194
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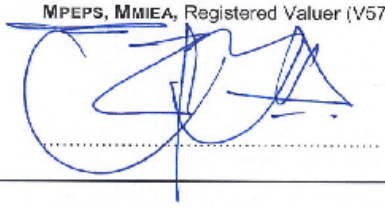
8.0 CONCLUSION

Based on the foregoing, we are of the opinion that fair compensation that should claimed under the provisions of the First Schedule of the land Acquisition Act, 1960 (Act 486) are as follows :-

	Heads of Claim	Amount	
1.	Market Value of Affected Land RM6,792,120.00		
	1. Lot 54992 – 487.041 sm @ RM10,000 psm		RM4,870,410.00
	2. Lot 54993 – 192.171 sm @ RM10,000 psm		RM1,921,710.00
2.	Other Claim –		
	i. Injurious Affection	Lot 54992	RM2,069,974.30
		Lot 54993	RM919,722.50
	ii. Illegal Possession for 57 months	Lot 54992	RM305,374.65
		Lot 54993	RM120,492.30
	Total Compensation RM10,207,683.75	Lot 54992	**RM7,245,758.95**
		Lot 54993	**RM2,961,924.80**
3.	Land Administrator Awards RM7,217,986.95		
	Market Value of Affected Land	Lot 54992	RM4,870,410.00
		Lot 54993	RM1,921,710.00
	Other Claim –		
	1. Injurious Affection		Nil
	2. Illegal Possession for 57 months	Lot 54992	RM305,374.65
		Lot 54993	RM120,492.30
4.	**Additional Awards RM2,989,696.80**		
	Other Claim –		
	1. Injurious Affection	Lot 54992	RM2,069,974.30
		Lot 54993	RM919,722.50

9.0 CERTIFICATION

This Assessor Report has been prepared by **SR ERY ZUWARDI BIN ANUAR, FRISM, MPEPS, MMIEA,** Registered Valuer (V573).



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Order accordingly.

Reported by Nabilah Syahida Abdullah Salleh